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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

CASPAR H. ESCHER, JR., et al., Plaintiffs and Respondents, v. FOUR BROTHERS VENTURES, LLC, et al., Defendants and Appellants.	A103403 (Napa County Super. Ct. No. 26-14189)

Defendants Four Brothers Ventures, LLC, and Richard Grace and Kimberlin Grace, as Trustees of the Grace Family Trust, purchased a landlocked parcel of real property in rural Napa County. Plaintiffs, the owners of the surrounding property,[1] filed suit to prevent defendants from gaining access across their property to the landlocked parcel. At trial, defendants relied on records of historic land transactions in contending that they are entitled to an implied easement across the neighboring properties. The trial court rejected that claim, and we affirm.

BACKGROUND

Plaintiffs individually own several residential and agricultural parcels of real property along a rural portion of Whitehall Lane in Napa County. In March 2000, defendants purchased a neighboring 105-acre parcel. On the map, defendants' parcel is

[1] In addition to Caspar H. Escher, Jr., plaintiffs include Casandra Escher and Christopher Escher, H. Brewster Atwater and Martha Atwater, Richard Berridge, Ted W. Hall and Ladislas L. Hall, and Long Meadow Ranch Partners, L.P.

landlocked. Whitehall Lane, the nearest road, lies far to the northeast of defendants' parcel. A large parcel owned by plaintiffs Bruce and Martha Atwater wraps like a collar around defendants' parcel on its northern, eastern and western borders. Beyond the Atwaters' parcel to the north and east lie various parcels owned by the remaining plaintiffs. Only after crossing these parcels is Whitehall Lane reached. Accordingly, to gain access to Whitehall Lane, defendants require an easement across the parcel owned by the Atwaters plus an easement across at least one of the parcels owned by another plaintiff. Although there are recorded easements across some of plaintiffs' parcels for the benefit of defendants' parcel, there is no record of the necessary easement across the Atwater parcel.

When defendants began crossing plaintiffs' properties to gain access to the landlocked parcel, plaintiffs filed this lawsuit for trespass and to quiet title. The quiet title action was tried to the court on June 25 and 26, 2003. At trial, defendants contended that they were entitled to an easement across the Atwater parcel by implication or by necessity. Defendants' claim to an implied easement was based upon a series of recorded property transactions during the last two decades of the 19th century.

The original owner of defendants' land was one J.A. Mathis, who acquired his property by patent from the United States. The Atwaters' parcel, with somewhat different boundaries, was owned at this time by J.H. Simpson. Mathis's property was then a square-shaped quarter-section of 160 acres, while Simpson's parcel, shaped like an inverted "L," bent around the Mathis property, bordering it on both the north and the east.

According to expert testimony at trial, when a property owner at the turn of the century failed to pay property taxes, the property was deemed sold to the state, but no deed was recorded. Instead, the property owner had five years in which to pay the back taxes, thereby "redeeming" the property. Only after five years of nonpayment could the state auction the property to a new owner.[2] In 1894, the Napa County Book of Deeds records a "Certificate of Redemption of Real Estate" to Mathis regarding the Simpson

[2] This five-year grace period for redemption continues to be the law in California. (Rev. & Tax. Code, § 3691, subd. (a)(1).)

property. The entry, entitled "State of California to J.A. Mathis," states that the Simpson property "was sold to the State on the 26th day of June, 1894, for the delinquent taxes of 1893, 1st & 2nd installments and redeemed on the 20th day of December, 1894 . . . ." The taxes, according to the document, had been assessed to "J.H. Simpson." The redemption price, presumably paid by Mathis, was $55.39. This transaction was reflected in the Napa County grantor/grantee indices by notations indicating the State of California as the grantor and Mathis as the grantee, dated December 22, 1894.

The next year, 1895, there is recorded in the Book of Deeds a quitclaim deed of two parcels from Mathis to Simpson. The two parcels are triangular pieces that constituted the northeast and northwest corners of the Mathis quarter-section, both of which bordered on the Simpson parcel. With the transfer of these parcels from Mathis to Simpson, Mathis's parcel took on the boundaries it has today. The Mathis-to-Simpson grant contained no mention of an easement. Other than the certificate of redemption and the 1895 deed of two corner parcels, Mathis does not appear in the chain of title of the property that eventually became the Atwaters'. In particular, there is no other instrument by which Mathis either gained ownership of or divested himself of this property. There are, however, instruments by which Simpson subsequently passed title to the property, and his chain of title can be traced to the Atwaters.

Plaintiffs' expert conceded that defendants' predecessor in interest, Mathis, had been granted easements across the property, or portions of the property, of plaintiffs Long Meadow Ranch Partners and the Eschers. Plaintiffs, however, disputed the existence of any other easements benefiting defendants' parcel, particularly one across the Atwaters' parcel. Defendants contended that the certificate of redemption demonstrated that Mathis had at one time owned the Simpson property and that they were entitled to an implied easement across the Simpson property as a result of its being sold off without any express provision for access to the Mathis property.

In a detailed and well-reasoned decision, the trial court rejected defendants' arguments, finding (1) that the certificate of redemption did not constitute a transfer of title to the Simpson property from the state to Mathis, (2) that even if the certificate did

constitute a grant of property it did not justify implying an easement over the Atwater property, and (3) that the balance of the hardships did not justify imposing an easement upon plaintiffs. Following the court's order, the parties stipulated to relief on plaintiffs' remaining causes of action, and judgment was entered for plaintiffs.

DISCUSSION

Defendants challenge the trial court's rejection of their claim of entitlement to an implied easement. Defendants do not challenge the trial court's denial of an easement by hardship, nor have plaintiffs cross-appealed the trial court's finding that defendants possess an easement over certain of the properties of Long Meadow Ranch Partners and the Eschers.

A. Standard of Review

The disposition of this case turns on a factual issue: whether J.A. Mathis owned both the Mathis and Simpson properties at some point in the past. To the extent it is necessary to construe a statute in the process of resolving that factual question, we review the trial court's legal conclusions independently. (*Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 173–174.) Regarding the trial court's ultimate factual conclusion that there was never any common ownership, however, we apply the substantial evidence test. (*Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888; *Kellogg v. Garcia* (2002) 102 Cal.App.4th 796, 803.) Although it is true, as defendants note, that the evidence is not in dispute, the inferences to be drawn from that evidence certainly are. It is the trial court's inferences from this evidence to which we apply the substantial evidence test. "The standard is deferential: 'When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination . . . .' [Citation.]" (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681.)

B. Defendants' Entitlement to an Implied Easement

An implied easement "may arise when, under certain specific circumstances, the law implies an intent on the part of the parties to a property transaction to create or transfer an easement even though there is no written document indicating such an intent." (*Mikels v. Rager* (1991) 232 Cal.App.3d 334, 357.) Because implied easements contravene the ordinary rule that an easement can only be created by an express writing or by prescription, implied easements are "not favored by the law." (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 131.)

Two circumstances commonly supporting the creation of an implied easement are potentially relevant here. The first, embodied in Civil Code section 1104, preserves important, long-standing uses in effect at the time of a sale of land. Implication of an easement in these circumstances requires three elements: (1) title must have been separated, necessarily requiring common ownership of the proposed dominant and servient tenements at some time in the past; (2) the use which gives rise to the easement must have occurred prior to the separation of title and to have been " '. . . so long continued and so obvious as to show that it was intended to be permanent . . . .' "; and (3) the easement must be " '. . . reasonably necessary to the beneficial enjoyment . . . ." of the sold parcel. (*Leonard v. Haydon* (1980) 110 Cal.App.3d 263, 266.)

The second circumstance supporting an easement by implication occurs when there is a separation of title, as above, and the implication of an easement across the land remaining in the hands of the seller " '. . . is absolutely essential as access to . . . .' " the sold parcel because the parcel is otherwise " '. . . completely landlocked . . . .' " (*Horowitz v. Noble*, *supra*, 79 Cal.App.3d at p. 130.) This is often referred to as an "easement by necessity." (*Kellogg v. Garcia*, *supra*, 102 Cal.App.4th at p. 803.) An easement by necessity " '. . . is of common-law origin and is supported by the rule of sound public policy that lands should not be rendered unfit for occupancy or successful cultivation. Such a way is the result of the application of the presumption that whenever a party conveys property, he conveys whatever is necessary for the beneficial use of that property and retains whatever is necessary for the beneficial use of land he still

possesses. . . .' " (*Daywalt v. Walker* (1963) 217 Cal.App.2d 669, 672–673, quoting 17A Am.Jur. (1957) Easements, § 58, pp. 668–669; *Roemer v. Pappas* (1988) 203 Cal.App.3d 201, 205.) Easements by necessity are implied " '. . . only in very limited circumstances. . . .' " and "cannot exist in the absence of strict necessity." (*Horowitz v. Noble*, *supra*, 79 Cal.App.3d at p. 130.)

Under either theory, a necessary prerequisite for an implied easement is unity of ownership in the parcels at the time the easement was created. The initial issue before the trial court was therefore whether the Mathis and Simpson parcels were under common ownership at a relevant time in the past, since an absence of common ownership would prevent imposition of an implied easement.[3] The only evidence on this issue submitted at trial, as suggested above, was the various property transaction records from the Napa County recorder's office, as presented by plaintiffs' expert witness.

Although there is no record of a transaction by which Mathis acquired ownership of the Simpson property, defendants argue that such ownership is demonstrated by the document reflecting Mathis's payment of delinquent taxes on the Simpson property in 1894. Defendants' argument is based on former Political Code section 3817, which at the time read in relevant part as follows: "In all cases where real estate has been or may hereafter be sold for delinquent taxes, and the State has become the purchaser, and has not disposed of the same, the person whose estate has been or may hereafter be sold, or his . . . successors in interest, shall, at any time after the time of purchase thereof by the

[3] Because both parcels were originally sold off by the federal government, there was unquestionably unity of ownership in the historic past. Such common government ownership may, under appropriate circumstances, support implication of an easement by necessity. (*Kellogg v. Garcia, supra*, 102 Cal.App.4th 796, 805; *Moores v. Walsh* (1995) 38 Cal.App.4th 1046, 1050.) To support an easement by necessity, however, the common ownership must have existed at the time of the conveyance "giving rise to the necessity" (*Roemer v. Pappas, supra*, 203 Cal.App.3d at p. 205)—here, at the time of the patent to Mathis. (See similarly, *Hewitt v. Meaney* (1986) 181 Cal.App.3d 361, 366.) Either Simpson or his predecessors in interest already owned their property at the time of the Mathis patent in 1884, however, precluding an implied easement on the basis of the government's common ownership. In any event, defendants presumably waived any issue of common government ownership by failing to raise it below.

State . . . have the right to redeem such real estate by paying to the County Treasurer . . . the amount of taxes due thereon at the time of said sale . . . . the County Treasurer shall give triplicate receipts . . . to the redemptioner . . . . The receipts of the County Treasurer, Controller, and County Auditor, may be recorded in the Recorder's office of the county in which said real estate is situated, in the book of deeds, and the record thereof shall have the same effect as that of a deed of reconveyance of the interest conveyed by said deed or certificate of sale." (Stats. 1883, ch. XVI, § 1, pp. 23–24.)[4]

Defendants first contend that the inclusion of the certificate of redemption in the grantor/grantee index and its recording in the Book of Deeds either evidences or embodies a transfer of ownership to Mathis. However, the purpose of a county recorder's books is solely to give constructive notice of real property transactions. (*Kent v. Williams* (1905) 146 Cal. 3, 8.) The nature of each transaction is determined by the legal effect of the recorded instruments. Because there is no question here relating to constructive notice, the manner and method of recording are irrelevant to determining whether an ownership interest existed.

Defendants next argue that Mathis must have been the owner because under former Political Code section 3817 only an owner of property was entitled to redeem the property. This argument mistakenly equates "redemption" with "paying the delinquent taxes." "Redemption" is the process of regaining ownership of property upon payment of delinquent taxes. (*Potter v. County of Los Angeles* (1967) 251 Cal.App.2d 280, 285–287.) While paying the delinquent taxes is necessary to cause redemption, it is the reconveyance of ownership that constitutes "redemption." Under the express language of section 3817, only an owner had this privilege of redemption.

Given the exclusivity of this privilege, it has been consistently held that the payment of delinquent taxes by a nonowner does not create a property interest in the payor. (*Secret Valley Land Co. v. Perry* (1921) 187 Cal. 420, 425; *Potter v. County of*

[4] The right of redemption continues to the present day, although with some modifications. The process is now governed by Revenue and Taxation Code sections 4101–4337.

Los Angeles, supra, 251 Cal.App.2d at pp. 285–287; *People v. Sanders* (1998) 67 Cal.App.4th 1403, 1413.) Because a "volunteer" (i.e., a nonowner) acquires no rights by paying delinquent taxes, the benefit of a volunteer's payment goes to the owner rather than the volunteer. (*Little v. City of Los Angeles* (1981) 117 Cal.App.3d 938, 942; *Spencer v. Harmon Enterprises, Inc.* (1965) 234 Cal.App.2d 614, 625–626.) Accordingly, Mathis's payment of the delinquent taxes does not demonstrate that he was the owner of the property; it merely demonstrates that the owner's interest had been redeemed by payment of delinquent taxes.

Although defendants state in their brief that "[v]olunteers were simply not allowed to pay, even if they had wished to," there is, as the trial court noted, absolutely no evidence in the record to support this assertion. Viewed as a matter of historic practice, defendants' contention is contrary to the inference to be drawn from the many cases that have adjudicated the legal effect of payments by persons other than owners. (E.g., *Secret Valley Land Co. v. Perry, supra,* 187 Cal. at p. 425; *Spencer v. Harmon Enterprises, Inc., supra,* 234 Cal.App.2d at pp. 625–626; *Potter v. County of Los Angeles, supra,* 251 Cal.App.2d at pp. 285–287; *Little v. City of Los Angeles, supra,* 117 Cal.App.3d at p. 942; *People v. Sanders, supra,* 67 Cal.App.4th at p. 1413.) For such cases to arise, local governments *must* have been willing to accept payment by persons other than the owner. Further, defendants' contention is contrary to common sense. Local governments presumably wanted to encourage the payment of delinquent taxes. A ban on payments by anyone other than the owner would have required local governments to adjudicate ownership of property before they could accept a payment of delinquent taxes and to decline payment from willing payors, both of which would have interfered with this goal. In light of these contrary indications, there is no reason to accept defendants' assertion in the absence of affirmative evidence to support it.

Nor is defendants' contention required as a matter of law by former Political Code section 3817. Although section 3817 clearly anticipates that the person paying the delinquent taxes will be the owner, it does not forbid local governments from accepting payment from third parties. It merely dictates that the owner will be the beneficiary of

those payments. Accordingly, the mere fact that Mathis was allowed to pay the delinquent taxes does not prove that he was the owner.

Nor does the reference to Mathis as the "redemptioner" in the recorded document conclusively demonstrate his ownership. Entitled "Certificate of Redemption of Real Estate," the document appears to be the "receipt" reflecting the payment of delinquent taxes described in former Political Code section 3817. As a receipt, the document demonstrates only that Mathis paid the taxes. Because the acquisition of title upon payment of delinquent taxes was available by law only to the owner, the reference to Mathis as a "redemptioner" in this receipt alone could not have caused him to acquire title if he was not the owner. It was ownership that dictated reacquisition of title, not the designation in a government form. For the same reason, this receipt itself does not effect any transfer of title. As noted above, the receipt merely demonstrates that the owner's interest had now been redeemed by payment of delinquent taxes; it does not tell us who that owner was.

Defendants mistakenly refer to this receipt as a "deed" and argue that it must be treated as a deed from the state to Mathis. However, former Political Code section 3817 is clear that this document is a receipt, not a deed. The receipt "ha[s] the *same effect* as that of a deed of reconveyance of the interest conveyed by" the transfer of interest to the state (Stats. 1883, ch. XVI, § 1, p. 24), but the "reconveyance" by law is to the owner of the property, not to the holder of the receipt.

On this record, therefore, Mathis's certificate of redemption does not conclusively establish his ownership of the Simpson parcel. It merely provides evidence of such ownership, based on the inference that Mathis was unlikely to have paid the delinquent taxes if he was not the owner. Against this inference, however, are the deeds establishing that Simpson was the record owner of this property at the time the taxes were assessed and the deeds demonstrating that Simpson subsequently exercised the prerogatives of ownership by conveying the property to others. In the absence of any evidence that Mathis opposed these transfers by interposing his own claim of ownership, it would appear that Simpson was the true owner of the property at the time these transactions

occurred. Mathis's transfer of portions of his adjoining parcel to Simpson in 1895 reinforces the impression that Simpson owned the property at this time. In the absence of any recorded deeds to and from Mathis, the natural inference is that Simpson was the owner at the time the redemption payment was made as well.

For defendants' theory of ownership to succeed, Simpson must have given Mathis an unrecorded deed at some time prior to the redemption payment, and Mathis must have reconveyed the property by another unrecorded deed soon after the payment was made. While this is not impossible, since deeds do not have to be recorded in order to be effective in transferring property ownership, defendants have provided no evidence other than the certificate of redemption itself to suggest why it might have occurred or even that it did occur. Moreover, unrecorded such transfers are inconsistent with the pattern of recorded deeds otherwise seen in the property's title history, including a *recorded* deed between Simpson and Mathis not one year after the redemption payments. The fact that Mathis nowhere occurs in the recorded title history of the property, while not conclusive, suggests strongly that he was never its owner—particularly in the absence of any evidence that unrecorded deeds actually existed.

As noted above, we apply the substantial evidence test to the trial court's determination that Mathis was never an owner of the Simpson property. Based on the above discussion of the evidence, we conclude that there is more than substantial evidence to support the trial judge's conclusion that the recorded deeds rebut the inference of ownership that might otherwise arise from Mathis's payment of delinquent taxes on the property. As the trial court concluded, Mathis appears to have been acting as a volunteer rather than an owner.

C. Easement by Reservation

Defendants also argue that an easement by reservation should arise from the transaction by which Mathis deeded to Simpson two triangular parcels from the Mathis property. Their argument is based on a strained analogy to *Hellweg v. Cassidy* (1998) 61 Cal.App.4th 806, in which the court held that a deed of trust on a parcel should be construed to cover not only the parcel as it existed at the time the deed of trust was

created but also a piece of property subsequently added to the parcel as a result of a lot line adjustment. (*Id.* at pp. 809–810.) *Hellweg*, it is important to note, was based in large part on the actual language of the deed of trust, which expressly stated that it would apply to future "improvements" to the parcel. (*Ibid*.) Here, we have no similar language. Moreover, while the circumstances of this transaction might have been appropriate to create an easement by implication across the parcels actually conveyed by Mathis, defendants have pointed to no principle of law that would allow Mathis (or defendants) to use the conveyance of those corner parcels to bootstrap an easement across the lands of Simpson that Mathis never owned.[5] As discussed at length above, the sine qua non of an implied easement is historic common ownership, and defendants failed to demonstrate common ownership of the Simpson parcel.

For the same reason, *Bartholomae Corp. v. W. B. Scott Inv. Co.* (1953) 119 Cal.App.2d 41, offers no help to defendants. In *Bartholomae Corp.*, the trial court found an express easement for a portion of a roadway providing access to the dominant estate and implied an easement over the remainder of the same roadway. Significantly, as the court noted, "[b]oth parties derive title from one W. F. Fundenberg." (*Id.* at p. 43.) In other words, there was once unity of title in the burdened land. Defendants' failure to demonstrate unity of title precludes their reliance on *Bartholomae Corp.*

Finally, defendants complain that the trial court failed to make a finding as to intent, contending that because the "recorded documents establish an intent to recognize the right of [defendants'] predecessor, Mathis, to use the Simpson property for roadway purpose [*sic*]," the court should have found an easement. Without passing judgment on the plausibility of defendants' attempt to derive such an intent from a cold documentary record containing no express reference to an easement across the Simpson property, the trial court was without power in these circumstances to imply an easement, even if the documentary record suggests some such implicit intent. An easement is ordinarily created " '. . . by an express writing or by prescription. . . .' " (*Horowitz v. Noble, supra*,

[5] In addition, the trial court found that any easement by reservation associated with the corner parcels would fall on defendants' land, the Mathis property.

79 Cal.App.3d at p. 131.) Defendants point to no such easement across the Atwaters' property. Of course, an easement can also be created by implication under certain circumstances, most importantly including unity of title, but defendants failed to prove that those circumstances existed here. Because they did not satisfy these requirements, defendants' abstract arguments about "intent" are simply insufficient to allow the imposition of an implied easement.

DISPOSITION

The trial court's judgment is affirmed.

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Margulies, J.

We concur:

_____
Stein, Acting P.J.

_____
Swager, J.